

**The State of South Carolina**  
**In The Court of Appeals**

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APPEAL FROM FLORENCE COUNTY

Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

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Case No. 2018-CP-21-03238

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**NATIONSTAR MORTGAGE, LLC**  
**d/b/a MR. COOPER,**

*Respondent,*

v.

**BARBARA A. GIBBS and**  
**MELVIN E. GIBBS,**

*Appellants*

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**APPELLANTS' INITIAL REPLY BRIEF**

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Barbara A. Gibbs, Pro-se  
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Appellants

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December 04, 2019

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**QUESTIONS PRESENTED**

I. Whether the Emperor has clothes? ..... 1

## **I. PRELIMINARY STATEMENT**

1. This Court must have the COURAGE to inform the Emperor (Nationstar Mortgage) [H]e has no clothes. Nationstar as part and partial of the continuing criminal enterprise formed by Bank of America [Hereinafter the HAMP-less Gang], duped the lower court into joining their criminal acts.

2. This Court must clearly and *emphatically* renounce the criminal conduct of the HAMP-less Gang and ensure their crimes aren't continued.

## **II. STATEMENT**

3. For ten (10) years the HAMP-less Gang has been permitted to destroy Appellants and steal \$300 billion. The law matters! Appellee must be forced to account for their criminal enterprise designed to steal \$300 billion and punish Appellants for exposing their continuing criminal enterprise.

## **III. STATEMENT OF FACTS**

4. Four (4) years ago Appellants appealed to this Court to end the continuing criminal enterprise being conducted against Appellants, two (2) million mortgagors similarly situated and the Treasury Department. This Court dismissed Appellants' appeal and issued a Mandate because Appellant, Melvin Gibbs failed to sign a submitted \$25 personal check.

5. The criminal conduct of Nationstar is pervasive and unrelenting, to wit:

a. Nationstar committed perjury in filing their foreclosure suit – alleging Appellants did not pay their mortgage August 2013; having full and complete knowledge Appellants paid their mortgage for July, August and September 2013.

b. Nationstar failed and neglected to file an affidavit of debt with their suit. AND, thereafter, without seeking leave to amend, submitted documents alleging Appellants also did not pay their mortgage July 2013: Nationstar knew this was perjury.

c. Nationstar failed and neglected to inform Appellants of any delinquent mortgage payments 30 days prior to filing the foreclosure suit as required by federal law.

d. Nationstar failed and neglected to serve with their foreclosure complaint and summons a copy of Appellants' right to modification as required by the Administrative Order of the SC Supreme Court.

e. Nationstar committed perjury in alleging Appellants did not pay their mortgage December 2011.

f. Nationstar committed perjury in alleging they are the true party-in-interest. Nationstar filed a pleading purporting to have transferred ownership of Appellants' mortgage note from Bank of America to Nationstar, having full and complete the document made no such sale of Appellants' mortgage note from Bank of America to Nationstar.

g. Nationstar, on behalf of the HAMP-less Gang, accepted \$45 billion from the Treasury Department to prevent foreclosure. Rather than preventing foreclosures, Nationstar forced Appellants and thousands of other mortgagors into foreclosure and make money on the foreclosures and defrauded the Department of Treasury of \$45 billion.

h. Nationstar and the HAMP-less Gang destroyed the Home Affordable Mortgage Program (HAMP) applications of Appellants and 2 million mortgagors. Nationstar destroyed the applications in violation of RICO and state laws; criminally depriving Appellants and 2 million mortgagors of \$25 billion per year.

(1) During the four (4) years since this Court dismissed Appellants' prior appeal, Nationstar has defrauded Appellants and 2 million mortgagors of \$100 billion.

#### **IV. STATEMENT OF THE CASE**

6. This case represents Bank of America (BOA) having received \$200 billion [Big 5 Banks: real value of \$27 Trillion] from the Treasury Department (2009) to avoid bankruptcy – with an agreement to modify mortgage loans at 2% under the Home Affordable Mortgage Program (HAMP).

7. Bank of America destroyed more than 2 million applications: defrauding applicants of \$25 billion per year. Bank of America also accepted \$45 billion from the Treasury Department to prevent foreclosures; Rather than preventing foreclosures, Bank of America has forced mortgagors into foreclosure – profiting from the sale of mortgagors' homes: Bank of America's criminal conduct has resulted in a windfall profit of \$300 billion.

8. WE NEVER MISSED A MORTGAGE PAYMENT, YET BOA HAS BEEN PERMITTED TO PURSUE US FOR SIX (6) YEARS DESTROYING US.

9. When Bank of America filed their illegal foreclosure, October 2013, WE had more than \$5,000 per month in disposable income and more than \$500,000 in assets. TODAY WE ARE BROKE: Financially and mentally.

10. After paying bills – I have \$50 in my checking account and \$75 in savings.... Extreme depression caused by Bank of America is the cause of our failure to WIN the LOTTERY. On June 7, 2019, Barbara informed me she had picked four numbers and felt if we “worked” together, we could win. Barbara picked 17, 19, and 27 based on reversing siblings' age and a double birthday; she

picked 68 because on a call from her 68 year old sister, but informed me she wasn't sure of 68 because [i]t had appeared in several drawings. I picked 39 the age of our oldest grandchild and added 40 because the prior night I had teased Barbara about how her father would add a year to your age. I selected 11 and 2 based on my birth month and day and selected combinations of ages of children and grandchildren to play 68 and replacing 68. However, because of my extreme depression over the financial situation caused by Bank of America, I didn't spend money I no longer had to play the lottery: **6/07/2019 Mega Millions 17,19,27,40,68 Powerball 2: \$530 million Cash Payout \$345.2 million – 1 Winner! If I had played there would've been 2 Winners: \$265 million – Cash Payout \$172.6.** Most reactions will center on the \$172.6 million. I'm saddened; not by the \$172.6 million but because reactions will focus on an amount that is less than one-quarter of one percent of the \$300 billion Bank of America has stolen and no action has been taken against Bank of America.

## **BACKGROUND**

11. In 2005 we built our custom retirement home in Florence, SC: 5,500 sq. ft. at a cost of \$700,000. Barbara secured a \$330,000 loan from Bank of America and I paid \$370,000. In 2006 Barbara secured a 2<sup>nd</sup> loan from BOA to purchase our home in Maryland. In 2009 after CANCER surgery at John Hopkins Hospital I suffered a loss of income. We applied to BOA to have the mortgages modified under HAMP. BOA offered to modify the loans for \$30,000. We rejected the offer and insisted the loans be modified under HAMP. For 3 years BOA claimed to have lost our applications and/or supporting documents or individuals responsible for our applications either quit or were transferred. In 2012 BOA wrote a letter thanking us for our patience and committed to resolving the issues. October 2013 Nationstar Mortgage – alleging they had purchased our mortgage from BOA filed a foreclosure suit alleging we failed to pay our mortgage August 2013 and

demanded payment in full of \$292,000. We submitted bank records proving payment from January 2012 to December 2013: each payment made on time, and proving the payments for October, November and December 2013 was reversed and to our account. After 6 years of litigation – the foreclosure suit should have been dismissed after 30 days, Barbara was forced to file for bankruptcy to save our home (Florence). I filed an Adversary Proceeding in the bankruptcy case and obtained a default against Nationstar. I'm seeking to convert the default into a default judgment (\$11.5 million=\$34.5 under RICO) and Nationstar seeks to set aside the default and have the case dismissed. Nationstar deliberately and maliciously reported nonpayment beginning September 2013 and destroyed Barbara's credit score: causing her score to fall from 825+ to 500....

## **II. ARGUMENT**

12. Nationstar having filed their Proof of Claim (POC) based on Appellants' mortgage contract – rather the judgment of the lower court, in the US Bankruptcy Court, Northern District of Georgia (Atlanta Division), deprives this Court and the lower court jurisdiction over Appellants' mortgage contract....

13. *Appellants aver and incorporate their Emergency Motion for Hearing, attached*

*hereto:*

## **I. PRELIMINARY STATEMENT**

1. Bank of America, aided by Nationstar Mortgage, formed a continuing criminal enterprise ten (10) years ago, designed to defraud the Treasury Department and 2 million mortgagors – including Appellants, of \$300 billion.

2. For six (6) years Nationstar, part and partial to the criminal enterprise used the Florence Court of Common Pleas to carry forth the criminal enterprise that Plaintiffs accurately named: The HAMP-less Gang. Nationstar acting for the HAMP-less Gang filed this illegal foreclosure and committed subsequent crimes to conceal [t]heir criminal acts.

## **II. STATEMENT**

3. *The gravamen of Appellants Adversary Proceeding filed in the Bankruptcy Court for the Northern District of Georgia is filed pursuant to the Racketeering Influence Corrupt Organization Act (RICO), against Bank of America, Nationstar and Does 1-10. AND, alleges deprivation of rights by individuals under the color of state law and those having the authority to do so, failed and neglected to protect Appellants.*

4. Appellants have filed a motion to remove the complaint to the district court.

5. This motion is filed out of respect for the legal process and to avoid naming officials of the State of South Carolina as co-conspirators.

## **III. STATEMENT OF FACTS**

6. Nationstar engaged in the subornation of perjury by certifying in the foreclosure Appellants failed to pay their mortgage for July, August and September 2013. AND, Nationstar continued the continuing criminal enterprise by filing a Proof of Claim (POC) in the bankruptcy court relying on the same perjury. AND,

7. In furtherance of the continuing criminal conspiracy, Nationstar alleged in their POC, Appellants did not pay their mortgage for December 2011: subornation of perjury. On July 26, 2013 Appellants wrote to Nationstar and included bank records that proved Appellants paid their mortgage for December 2011 and warned Nationstar not to join Bank of America's criminal enterprise.

a. It appears Nationstar may have communicated this false information to the judge(s) hearing the foreclosure litigation. It is impossible to maintain a foreclosure suit where, as here, Appellants never missed a mortgage payments and submitted 2 years of bank records as proof.

## **IV. STATEMENT OF THE CASE**

8. Whether Nationstar may use South Carolina courts to pursue a foreclosure when Appellants never missed a mortgage payment. AND, whether the SUBORNATION OF PERJURY in furtherance of a continuing criminal enterprise, may be maintained in this Court and the lower courts?

9. Nationstar has failed to answer or otherwise plea in the Adversary Proceeding (Bankruptcy) thereby admitting to each and every allegation – in chief, subornation of perjury and the criminal enterprise designed to punish Appellants for pursuing their right to have their mortgage modified under the Home Affordable Mortgage Program (HAMP).

## V. ARGUMENT

10. Chief Judge Wendy L. Hagenau, U.S. Bankruptcy Court, Northern District of Georgia (Atlanta) Case No. 19-54809WLH (Adversary Proceeding #: 19-05272WLH), issued an order modifying the Automatic Stay; permitting this Court to proceed with Appellants' appeal: **ORDER, pp. 8-9.**

11. The attached Title Page from the Adversary Proceeding was filed in opposition to Bank of America's motion to dismiss. The Title Page is included to provide this Court with the correct heading: **Title Page, pp. 10-11.**

12. Appellants filed suit against Nationstar alleging as the gravamen – a continuing criminal enterprise designed to defraud the Treasury Department and 2 million mortgagors, of which Appellants are members, of \$300 billion. Nationstar did not Answer or otherwise plea. Upon Appellants request for entry of default, the Clerk entered default on the 13<sup>th</sup> day of September 2019: **Entry of Default, pp. 13-14.**

13. Nationstar has admitted [t]hey are engaged in a continuing criminal enterprise with Bank of America and Does 1-10. AND, Nationstar as part and partial to the criminal enterprise committed fraud and other criminal acts, to wit:

a. Nationstar is not the party-in-interest to Appellant's mortgage note and therefore did not have standing to file the foreclosure litigation – lack of jurisdiction.

(1) Nationstar in furtherance of the criminal enterprise, constructed and had the lower court sign an order, Nationstar was falsely created to protect the criminal enterprise.

b. Nationstar knew Appellants paid their mortgage for the months of July, August and September 2013 and because there were no damages Nationstar did not have standing to file the foreclosure litigation. Nationstar having breached the mortgage contract, prevents the breaching party from suing on said contract.

c. Nationstar filed an affidavit of debt they knew was prepared falsely and filed in the lower court in violation of prohibition of subornation of perjury.

d. Nationstar violated the Administrative Order of the South Carolina Supreme Court and did not serve on Appellants their right to Modification with the complaint and summons.

e. Nationstar did not provide Appellants, pursuant to federal law, a 30 day notice to cure the alleged default: detailing any and all moneys due and owed, prior to filing foreclosure litigation.

f. Nationstar willfully and falsely reported to the credit bureaus that Appellant had failed and neglected to pay the mortgage when due and owed – to destroy Appellants’ ability to be financially secure: Barbara Gibbs’ credit score changed from more than 825 to about 500.

14. Nationstar filed their Proof of Claim (POC) in the bankruptcy court: the POC was based on the mortgage contract rather than the judgment of the lower court. Nationstar having voluntarily transferred jurisdiction to federal court, renders the foreclosure null and void.

15. During the bankruptcy and without a order or direction by Judge Hagenau, Nationstar voluntarily accepted mortgage payments of \$2,197.32 for the months of June, July, August, September and October 2019.

a. Nationstar’s *offered* modification required Appellants to pay three (3) timely mortgage payments for the modification to become permanent.

b. Nationstar’s acceptance of three (3) mortgage payments reinstates Appellants mortgage contract, forgives any and all money in arrears caused by Nationstar’s breach of the mortgage contract and renders the foreclosure litigation null and void.

14. Congress enacted the RICO to provide an additional effective crime fighting tool to combat organized crime – including a civil remedy for damaged there from. In relevant part:

a. 18 U.S. Code § 1964. Civil remedies –

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, ***making due provision for the rights of innocent persons.***

(c) ***Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee...***

15. Even if by some legal miracle, Nationstar is able to have their default vacated and set aside, the evidence submitted in this case, proves each and every stated criminal act.

16. Fair legal analysis produces two (2) conclusions that “eat” at the integrity of the lower courts. If, there is another conclusion exist, [i]t must be stated! This case was allowed to proceed for six (6) years although Nationstar is not the party-in-interest and Appellants never missed a mortgage payment.

17. One analysis requires Nationstar having, *ex-parte*, provided the lower court information alleging Appellants did not pay their mortgage December 2011 and other costs due and owed: this claim was not included in the foreclosure complaint and a motion to amend was not filed. If this happened, given an opportunity to respond, Appellants would have produced bank records to prove payment and Appellants warned Nationstar not to join the criminal enterprise and use this as an issue: **Appellants' Letter dated July 26, 2013, pp. 14-15.**

18. The lower courts accepted some type of benefit to dismiss this case as required by law: Appellant, M. Gibbs filed an Answer denying each and every allegations – this pleading prevented Nationstar from amending the complaint without leave to do so. Appellant, B. Gibbs filed a motion to dismiss – attaching bank records proving timely mortgage payments for January 2012 to December 2013.

a. The lower court never ruled on the motion to dismiss: a proper ruling would have provided Appellant, B. Gibbs 30 days to file an Answer. AND, the lower court granted Nationstar's motion for summary judgment although every issue, not only was disputed, Appellants by uncontroverted evidence and affidavits, Nationstar's facts were false and criminal.

18. **This Court must REMAND this case to the lower court to allow that court to provide a third explanation.**

19. THIS IS NOT A CIVIL CASE – IT IS A CRIMINAL CASE IN WHICH A CRIMINAL ENTERPRISE IS USING THE CIVIL FORECLOSURE PROCESS AND THIS COURT TO ACCOMPLISH A CRIMINAL PURPOSE!

20. This Court, using the parameters of 18 USC § 1964(a), must take any and all actions necessary to protect Appellants from the criminal acts being perpetrated by Nationstar and the criminal enterprise; and protect the integrity of this Court and the lower court.

## VI. CONCLUSION

This Court must issue an Order – protecting Appellants from the criminal acts of Nationstar and their co-conspirators, sanction Nationstar and REMAND this case to the lower court for an *evidentiary hearing*.

**WHEREFORE**, Defendants pray this Honorable Court hold an EMERGENCY HEARING, sanction Nationstar, REMAND the case to the lower court, and grant such other and further relief, at law and equity, general or special, to which Defendants have shown themselves justly entitled.

Respectfully Submitted,

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### III. CONCLUSION

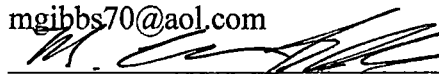
This Court must sanction Nationstar and their attorneys and ensure Appellants' safety and well being.

**WHEREFORE**, Defendants pray this Honorable Court reverse the lower court's grant of Respondent's Motion for Summary Judgment, rule the lower court does not have jurisdiction in this case – dismissing said case, grant Appellants' Motion to Dismiss and grant such other and further relief, at law and equity, general or special, to which Appellants have shown themselves justly entitled.

Respectfully Submitted,



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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
NATIONSTAR MORTGAGE, LLC )  
d/b/a MR. COOPER, )  
 )  
Respondent, )  
 )  
vs. )  
 )  
BARBARA A. GIBBS, MELVIN E. )  
GIBBS, )  
Appellants. )  
\_\_\_\_\_ )

IN THE COURT OF APPEALS  
OF SOUTH CAROLINA

CASE No: 2019-000486

**CERTIFICATE OF SERVICE**


I, Melvin E. Gibbs, hereby certify that a copy of Appellants' Reply Brief was placed with USPS, postage prepaid, the 4<sup>th</sup> day of December 2019, addressed to:

Brian A. Calub, Esq.  
McGuire Woods LLP  
201 North Tryon Street, Suite 3000  
Charlotte, NC 28202

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SC Court of Appeals

  
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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
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NATIONSTAR MORTGAGE, LLC )  
d/b/a MR. COOPER, )  
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Respondent, )  
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vs. )  
 )  
BARBARA A. GIBBS, MELVIN E. )  
GIBBS, )  
Appellants. )  
\_\_\_\_\_ )

IN THE COURT OF APPEALS  
OF SOUTH CAROLINA

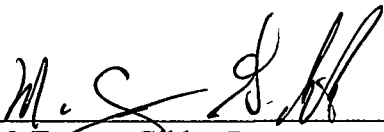
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CLERK:

Be advised on the 6<sup>th</sup> day of December 2019, I inadvertently mailed the enclosed Initial Reply to the wrong court. Letter attached from said court.

  
\_\_\_\_\_  
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CC: Brian A. Calub, Esq.

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA

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(404) 215-1000

December 6, 2019

Melvin E. Gibbs  
3108 Hidden Falls Drive  
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RE: Unknown Case Number  
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Dear Mr & Mrs. Gibbs:

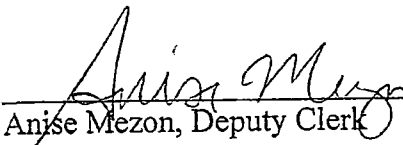
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Enclosure

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